

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

CHRISTIANA FIRE COMPANY, INC.

Employer

and

Case 4–RC–21000

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS  
LOCAL 4417, AFL-CIO, CLC<sup>1</sup>

Petitioner

**REGIONAL DIRECTOR’S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Christiana Fire Company, provides fire suppression and emergency medical services to the public in the Christiana, Delaware area. The Petitioner, Firefighters Local 4417, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer’s full-time paid Fire Suppression employees.<sup>2</sup> The Employer contends that it is a political subdivision of the State of Delaware and therefore exempt from the Board’s jurisdiction under Section 2(2) of the Act.

A Hearing Officer of the Board held a hearing on the issue of whether the Board has jurisdiction over the Employer, and both parties filed briefs. I have considered the evidence and arguments presented by the parties, and I have concluded that the Employer is not an exempt political subdivision of the State of Delaware and is therefore within the Board’s jurisdiction.

In this Decision, I will first review the factors that must be evaluated in determining whether the Employer is an exempt political subdivision of the State of Delaware, and I will then present the facts and the reasoning in support of my conclusion.

**I. RELEVANT LEGAL STANDARDS**

In setting forth the definition of “employer,” Section 2(2) of the Act specifically excludes “any State or political subdivision thereof.” In *NLRB v. Natural Gas Utility District of Hawkins*

---

<sup>1</sup> The Petitioner’s name appears as amended at the hearing.

<sup>2</sup> The Employer has stipulated that, in the event the Board asserts jurisdiction in this case, the petitioned-for unit is appropriate. The parties agree that per diem and part-time employees are excluded from the unit.

*County*, 402 U.S. 600, 604-605 (1971), the Supreme Court adopted the Board's test for whether an employer is an exempt political subdivision of a state. Pursuant to this test, an entity is exempt only if it is either: (1) created directly by the state, so as to constitute a department or administrative arm of the state; or (2) administered by individuals who are responsible to public officials or to the general electorate. *Id.* at 605. To determine whether an entity is "administered by" individuals responsible to public officials or to the general electorate, the Board considers whether those individuals are appointed by and subject to removal by public officials. *Research Foundation of the City University of New York*, 337 NLRB 965, 969 (2002); *Oklahoma Zoological Trust*, 325 NLRB 171, 172 (1997).

## **II. FACTS**

### *Overview*

The Employer was founded as a private corporation in 1921 by 20 residents of the town of Christiana in New Castle County, Delaware. In 1985, the Employer was converted to a 501(c)(3) non-profit corporation pursuant to a vote of its membership.

The Employer operates from three station houses. Along with a roster of over 100 volunteer firefighters, the Employer has 12 paid employees, including 11 Fire Suppression employees.<sup>3</sup> These employees are trained Emergency Medical Technicians (EMTs), who provide emergency medical services about 80 percent of the time and perform fire suppression work about 20 percent of the time.

In New Castle County, there are 21 local volunteer fire companies and a fire company operated by the City of Wilmington. Each fire company serves a geographic region called a "response district," within which it is primarily responsible for handling fire and other emergency calls. The fire companies have mutual aid agreements whereby they lend equipment to each other as needed.

### *The Employer's Organizational Structure*

The Employer is composed of its active volunteer firefighter members.<sup>4</sup> The Employer's operations are governed by its bylaws, which can be changed or repealed only by a two-thirds majority vote of Directors or voting members at a meeting. Under the bylaws, the members are responsible for electing, on an annual basis, nine of the twelve members of the Board of Directors, as well as all but one of the Employer's administrative and operational officers.<sup>5</sup> Nominations for these positions are submitted by members at the general membership meeting preceding the election. The nine Directors elected by the membership are members of the

---

<sup>3</sup> The parties agree that the twelfth paid employee, who performs administrative functions, is excluded from the bargaining unit.

<sup>4</sup> Pursuant to the bylaws, an individual may become a member only after completing a probationary period and receiving a majority vote of acceptance by the Employer's membership. A member may be suspended or expelled for cause by a majority vote of the Board of Directors.

<sup>5</sup> The single exception is the Fire Reporter, who is appointed by the Fire Chief.

Employer, while the remaining three Directors are non-members appointed by the President and Board of Directors.

The Board of Directors is responsible for managing the Employer's affairs. Reporting to the Board are the individuals responsible for the Employer's administration, including its President, Vice-President, Secretary, Financial Secretary, and Treasurer, and those responsible for its operation, including the Fire Chief, Deputy and Assistant Chiefs, and various other officials. The Fire Chief, who bears primary responsibility for all operational issues within the company, assigns work to the Fire Suppression employees.

### *The Employees in the Bargaining Unit*

Each of the 11 Fire Suppression employees in the petitioned-for unit is required to be state-certified as an Emergency Medical Technician-Basic, capable of providing basic life support.<sup>6</sup> Applicants for this position are interviewed by a hiring committee comprised of the Employer's members, which presents its recommendations to the Board of Directors for the final hiring decision. Applicants must submit to criminal background checks by the state police at their own expense. A Budget Committee, also consisting of the Employer's members, sets wages for the employees based on studies of wages paid by other fire companies in the area. The Employer's staffing level is determined exclusively by the Board of Directors; neither the State nor the County has any involvement in that decision.

Emergency calls are received initially by a "911" call center operated by New Castle County and routed to a County dispatch center, which dispatches to the scene of the emergency both a basic life support unit from the volunteer fire company and a County paramedic unit capable of providing advanced life support. At the scene, primary responsibility for patient care falls to the paramedic unit unless the basic life support unit arrives first. Once both units are present, the basic life support unit provides secondary support to the paramedic unit as needed. After the paramedic unit stabilizes the patient, the Employer's ambulance transports the patient to the nearest hospital.

Under a state law, the Employer's Fire Chief or his designee has the authority to control operations at an emergency scene, including the right to direct traffic, blockade streets, and enter private property as necessary.

### *The Employer's Finances*

In each of its fiscal years 2003 and 2004, the Employer had revenues of slightly less than \$2,000,000. Approximately 41 percent of its funds came from government appropriations, and the remainder was garnered from ambulance services billing, donations, fire insurance tax rebates, and miscellaneous other sources.<sup>7</sup> The Employer's Budget Committee is responsible for setting the Employer's annual operating budget.

---

<sup>6</sup> This state certification issues from the Delaware State Fire Prevention Commission.

<sup>7</sup> Thus, in fiscal year 2004, \$763,967.86 out of a total income of \$1,875,867.85 was received from government appropriations.

The fee charged for ambulance service is determined by the Employer.

The Employer generates an annual financial statement disclosing its receipts and disbursements for the fiscal year. Although not required by law to do so, the Employer submits this form to the Delaware State Fire School, which then transmits copies to various state agencies, including the Office of the Budget Director, State Treasurer, Secretary of the Department of Finance, Delaware State Auditor, and Controller General. There is no mandatory review or approval of the Employer's finances by any governmental body.

### *The Employer's Ties to Governmental Agencies*

#### State Fire Prevention Commission

The Delaware State Fire Prevention Commission (the Commission), which consists of seven members appointed by the Governor, regulates fire suppression and ambulance service activities throughout the State. 16 Del. Code § 6603, 6717. The Commission is also responsible for the Delaware State Fire School, which provides professional volunteer firefighters with low cost professional instruction and training. 16 Del. Code § 6613, 6614.

As noted above, each of the volunteer fire companies in New Castle County has a geographical response district in which it is primarily responsible for handling fire suppression and other emergency calls. Alterations to the boundaries of these districts require approval by the Commission. Similarly, by virtue of recently promulgated regulations, a new fire station cannot be built or dismantled without prior approval from the Commission. The Commission also possesses the authority to resolve disputes both between and among volunteer fire companies and within individual fire companies.

Notwithstanding the various powers possessed by the State Fire Prevention Commission, according to the Employer's President, Robert Stineman, the Employer has no regular dealings with the Commission, nor is it required to submit any reports to the Commission.

#### Fire and Ambulance Advisory Board

The Fire and Ambulance Advisory Board, which consists of seven representatives from New Castle County volunteer fire companies who are appointed by the New Castle County Executive,<sup>8</sup> serves as a liaison between the fire companies and the County government. In this capacity, the Advisory Board approves applications for impact fees and approves Initial Response Plans (IRPs).

Impact fees are fees required by law to be paid into a fund by developers and builders in New Castle County. Monies from this fund are available to entities that provide public services, including volunteer fire companies, upon a showing that they must add or expand service due to population growth in the County.<sup>9</sup> In order to receive impact fees, an organization must submit

---

<sup>8</sup> The County Executive is an elected official who serves as the head of the executive branch of government for New Castle County.

<sup>9</sup> The impact fee system was established in 1999 by New Castle County; among its beneficiaries are police, libraries, parks, and educational and sewer services.

an application to the Advisory Board describing the basis for the need and how the appropriation will be spent. If the application is approved, it is forwarded to the County's Department of Land Use for review and public hearing. The Employer does not avail itself of the impact fees program every year because the fees can be used only for the purchase of additional apparatus and equipment.

IRPs are protocols for the types of equipment that should be taken on emergency calls based on the type of emergency involved. They are formulated by the New Castle County Fire Chiefs Association. The protocols established in the IRPs are not mandated by law, but generally follow guidelines set forth by the National Fire Protection Agency. After the Fire Chiefs Association approves a new or amended IRP, the Advisory Board must approve the change for it to become effective.

### *Miscellaneous*

Like all volunteer fire companies in the County, the Employer is exempt from property taxes. Division 14.06.100 of Article 6 of the New Castle County Code exempts from property taxes "Charitable, religious and educational property," which includes volunteer fire companies. A separate provision of the Code, Division 14.06.200, lists an exemption for "governmental property."<sup>10</sup>

Along with state governmental agencies, volunteer fire companies in the State of Delaware are permitted to participate in a centralized purchasing program. Volunteer fire companies may purchase supplies, equipment, and vehicles under this program.

Volunteer fire companies in the State of Delaware are also entitled, by statute, to participate in a number of state benefits programs. Thus, they may, under Title 29 of the Delaware Code, opt into the State Health Insurance Program and the County and Municipal Pension Plan,<sup>11</sup> and under Title 18, firefighters and volunteer ambulance and rescue company members are entitled to line-of-duty death and disability benefits. Additionally, the state Workers' Compensation statute specifically provides that firefighters shall be treated as State employees if the State or the fire company elects to be covered by the statute. 19 Del. Code § 2312. The Delaware County and Municipal Tort Claims Act includes volunteer fire companies under the definition of "governmental entity" and provides them with qualified immunity from various tort claims.

Although the Employer holds all of its membership meetings open to the public, it is not legally required to do so. Only the meetings concerning the Employer's application for use of

---

<sup>10</sup> The Code defines governmental property as "property owned by the United States, the State, the County, incorporated municipalities located in the County, and any agency or instrumentality of any of these governments and used for governmental purposes . . . includ[ing] but not limited to city halls; courthouses; administration buildings; police stations; jails, and detention facilities; fire stations; parks, playgrounds, and libraries, provided they are open to all residents of the County; and public streets and roads."

<sup>11</sup> There is a separate state-created pension plan, called the Delaware Volunteer Firemen's Pension Plan, that applies only to volunteer firefighters.

impact fees, which are conducted by the Fire and Ambulance Advisory Board, must be open to the public.

The Employer is listed as a Fire Department in the “Police & Public Safety” section of Delaware’s official website.

### **III. ANALYSIS**

Although the Employer provides vital public services, receives considerable financial assistance from governmental authorities, and is subject to various State and County regulations, the Employer is not a political subdivision of the State of Delaware and therefore is not exempt from the Board’s jurisdiction under Section 2(2) of the Act.

The Employer does not meet the first prong of the *Hawkins County* test for political subdivision status. Thus, the Employer was not created by any state enabling action, so as to constitute “a department or administrative arm of the state.” Rather, the Employer was founded as a corporation by private citizens. *Research Foundation of the City University of New York*, 337 NLRB 965, 968 (2002).

Significantly, the Employer controls its own budget and is not required to submit that budget to any public agencies for review, although it voluntarily submits its annual financial statement of receipts and disbursements to the Delaware State Fire School. See *Research Foundation of the City University of New York*, supra, 337 NLRB at 966, 969 (2002). Cf. *The Regional Medical Center at Memphis*, 343 NLRB No. 48, slip op. at 15 (Oct. 27, 2004) (employer exempt where, among other things, its annual budget was subject to the approval of the county).<sup>12</sup> Although the financial support the Employer receives from state and local governmental authorities weighs in favor of a finding that it is a political subdivision, that factor is not dispositive. In *Connecticut State Conference Board*, 339 NLRB 760, 763 (2003), in a decision affirmed by the Board, the administrative law judge held that a contractor operating a public bus transit system in Connecticut was not an exempt political subdivision even though virtually all of its funding was provided by the State. Similarly, in *FiveCAP, Inc.*, 331 NLRB 1165, 1168 (2000), the Board found that a non-profit corporation that was heavily supported by federal funding was not an exempt political subdivision where its board of directors was not responsible to the general electorate. In the instant case, moreover, the Employer receives less than half of its funding from non-governmental sources. See *Truman Medical Center, Inc.*, 239 NLRB 1067 (1978).<sup>13</sup> Additionally, the Employer’s exemption from taxes stems from its non-profit nature, not its political subdivision status, and therefore lends no support to the Employer’s argument. *Id.*

---

<sup>12</sup> In that case, in finding the Employer to be exempt, the Board also relied significantly on the fact that the number and selection of its board of directors was subject to appointment by elected officials.

<sup>13</sup> In that case, the Board found a hospital not to be a political subdivision although a city provided 40 percent of its budget and provided various other services, including building maintenance, water, and sewer service.

Nor does the fact that the Employer exercises certain quasi-public powers, such as the right to control activity at a fire scene, require a different result. See *Concordia Electric Cooperative*, 315 NLRB 752, 752 (1994) (electrical cooperative with state-granted power of eminent domain not exempt as a political subdivision). Likewise, the regulatory control exerted over the Employer by the State Fire Prevention Commission and Fire and Ambulance Advisory Board does not compel a finding that the Employer is a political subdivision. In *Concordia Electric Cooperative*, the employer was subject to substantial regulation by the Louisiana Public Service Commission with respect to its rates and quality of service, and the Commission was authorized to investigate complaints against the Employer concerning such matters as poor service and incorrect billing. Despite these facts, the Board held that the Employer was not an exempt political subdivision because it failed to meet either of the *Hawkins County* criteria. Id.

Although not controlling, the Board has found a government's characterization of an entity to be an important factor in determining whether the Employer was created so as to constitute a department or administrative arm of government. *Hinds County Human Resources Agency*, 331 NLRB 1404 (2000); *University of Vermont*, 297 NLRB 291, 294 (1989). Here, the New Castle County Code, in its provisions concerning property tax exemptions, recognizes a distinction between governmental property and property owned by volunteer fire companies, and other County documents support this distinction. Thus, in a memo documenting highlights of its 2005 operating budget, the County lists a funding increase for its *partnership* with local volunteer fire companies, not for the fire companies themselves, as it does in its reference to a funding increase for the City of Wilmington Fire Service.<sup>14</sup> Thus, the County appears to view the Employer as an organization with ties to the government but not itself a governmental entity.

The Employer likewise fails to meet the second prong of the *Hawkins County* inquiry, i.e., whether the employer is administered by individuals who are responsible to public officials or the general electorate. Under the Employer's bylaws, nine out of 12 members of its Board of Directors and all but one of its officers are elected to their positions by the Employer's membership. Neither the State Fire Prevention Commission nor the Fire and Ambulance Advisory Board plays any role in the Directors' or officers' selection or retention or in the hiring of any employees. See *Research Foundation of the City University of New York*, supra, 337 NLRB at 969-970; *Enrichment Services Program, Inc.*, 325 NLRB 818 (1998); *Cape Girardeau Care Center, Inc.*, 278 NLRB 1018, 1019-1020 (1986). Further, the Employer's Board of Directors itself controls the Employer's general operations and daily administration, and proposed changes to the Employer's bylaws are within the exclusive control of the Board of Directors or the membership.

Based on the foregoing, I find that the record shows that the Employer is not an exempt political subdivision under Section 2(2) of the Act and is therefore subject to the Board's jurisdiction. *NLRB v. Natural Gas Utility District of Hawkins County*, supra; *Research Foundation of the City University of New York*, supra. Accordingly, I shall direct an election in the agreed-upon unit.

---

<sup>14</sup> Similarly, the New Castle County organizational chart for 2003 lists, under the heading "Police," not fire departments themselves but *grants* to volunteer fire companies.

#### **IV. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time paid Fire Suppression employees employed by the Employer, excluding all volunteer firefighters, per diem employees, employees not engaged in fire suppression duties, managers, and supervisors as defined in the Act.

#### **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Association of Firefighters Local 4417, AFL-CIO, CLC**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

##### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been



discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within (seven) **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before, **May 6, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to [Region4@NLRB.gov](mailto:Region4@NLRB.gov).<sup>15</sup> Since the list will be made available to all parties to the election, please furnish a total of two (**2**) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (**3**) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (**5**) working days

---

<sup>15</sup> See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).

prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **May 13, 2005**.

Signed: April 29, 2005

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]  
\_\_\_\_\_  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four